

**OPINION**  
**51-15**

March 2, 1951           (OPINION)

CITIES

RE: Funds Must be Used for Purpose Raised

You have asked the opinion of this office upon the question of whether or not the city may borrow from a fund created for the building of a city auditorium, to augment the city's fund for building a sewage disposal plant. We understand that the auditorium fund was created by a sale of municipal bonds authorized by chapter 21-03 N.D.R.C. 1943.

Section 21-0228 provides in part as follows:

"all borrowed money shall be paid into the treasury of the municipality borrowing it, shall be kept there until used, in a fund separate and distinct from all other funds, to be used for the purpose for which it was borrowed and for no other purpose. \* \* \*"

Furthermore, section 21-0349 provides that:

"Any treasurer who shall make a payment of any amount out of the borrowed money fund for any purpose for the purpose for which the fund was raised, or except by transfer to the sinking fund established for the retirement of the debt obligation, shall be guilty of a misdemeanor."

And this section further provides that any officer of the municipality who shall be a party to any such diversion shall also be guilty of a misdemeanor.

In view of these express statutory provisions, it is our opinion that such borrowing from the auditorium fund for the building of a sewage-disposal plant is strictly forbidden by law, and any officer participating in such a diversion of the auditorium fund would be guilty of a misdemeanor and punishable by fine and imprisonment.

ELMO T. CHRISTIANSON

Attorney General